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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

CITY OF PORTLAND,

Defendant.

Case No. 3:12-cv-02265-SI

DECLARATION OF COUNSEL

I, Juan C. Chavez, submit the following declaration:

I am of Counsel for the Mental Health Alliance, and I make this declaration in support of our Response Brief to City's Motion for Reconsideration for the purpose of identifying exhibits. My statements are true to the best of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

1. I am one of the Counsels of Record for the *Amicus Curiae* Mental Health Alliance.
2. Exhibit 1 is a true and correct copy of Ballot Measure 26-217.

3. Exhibit 2 is a true and correct copy of Resolution 37527.
4. Exhibit 3 is a true and correct copy of an excerpt from the Portland City Auditor's 2022-23 proposed budget.

I hereby declare that above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED: September 26, 2024

/s/ Juan C. Chavez
Juan C. Chavez, OSB 136428
Of Counsels to *Amicus* Mental Health Alliance

EXHIBIT A**Proposed Charter Changes****PREAMBLE****Chapter 2: Government****Article 10: Community Police Oversight Board**

Section 2-1001. City of Portland Community Police Oversight Board. A Board is hereby authorized and shall be established upon compliance with any legal obligations the City may have under the Public Employees Collective Bargaining Act, other state and federal laws, and upon adoption by City Council of an implementing Ordinance. The mission of the City of Portland Community Police Oversight Board (Board) is to independently investigate Portland Police Bureau sworn employees and supervisors thereof promptly, fairly, and impartially, to impose discipline as determined appropriate by the Board, and to make recommendations regarding police practices, policies and directives to the Portland Police Bureau and with a primary focus on community concerns. The final name of this Board will be established by City Code.

Section 2-1002. Nature of the Board. Board members shall be appointed by approval of Council to a term of years established in City Code. Members may not be removed from the Board prior to the completion of their term except for cause. Successors to an unexpired term shall be appointed by approval of Council for the remainder of the term. The Board shall make provisions to ensure its membership includes representation from diverse communities including those from diverse communities and with diverse lived experiences, particularly those who have experienced systemic racism and those who have experienced mental illness, addiction, or alcoholism.

Section 2-1003. Restrictions on Board Membership. People currently employed by a law enforcement agency and their immediate family members are not eligible for service on the Board. People who were formerly employed by a law enforcement agency are not eligible for service on the Board.

Section 2-1004. Budget of the Board. Funding for the Board shall be proportional to be no less than 5 percent of the Police Bureau's Annual Operational Budget.

Section 2-1005. Professional Staff of the Board. The Board shall hire a Director to manage the professional administrative staff and professional investigators, and to make operational and administrative decisions. The Director is a "Bureau Director" for purposes of Charter section 4-301 and shall be appointed by, and serve at the will and pleasure of, the Board. Professional staff of the Board, other than the Director, shall be appointed by and serve under the direction of the Director as classified employees.

Section 2-1006. Independent Authority. The Board shall have authority to exercise independent judgment in performing all legally assigned powers and duties. The Mayor, City Council, Auditor, and City departments, bureaus and other administrative agencies shall not interfere in the exercise of the Board's independent judgment. The physical office of the Board shall be located outside of a Portland Police Bureau facility.

Section 2-1007. Powers of the Board.

- (a) The Board shall have the power to the full extent allowed by law to receive and investigate complaints including the power to subpoena and compel documents, and to issue disciplinary action up to and including termination for all sworn members and the supervisors thereof within the Portland Police Bureau.
- (b) The Board shall have the authority to make policy and directive recommendations to the Portland Police Bureau and City Council. The Portland Police Bureau shall consider and accept or reject all policy or directive recommendations made by the Board. If the Portland Police Bureau rejects a policy or directive recommendation, then at the request of the Board, City Council must consider and vote to accept or reject the policy recommendations received from the Board. Council's decision will be binding on the Portland Police Bureau.
- (c) The Board shall have the authority and ability to gather and compel all evidence, to access all police records to the extent allowed by federal and state law, and the ability to compel statements from witnesses including officers. The Board shall make provisions for regular and open meetings, public transparency, and reporting on the Board's activities. One of the goals of the Board will be to remove barriers for Board members to fully participate in the work of the Board.
- (d) The Board shall have the power to compel sworn members of the Portland Police Bureau and their supervisors to participate in investigations and to completely and truthfully answer all questions. Refusal to truthfully and completely answer all questions may result in discipline up to and including termination.

Section 2-1008. Duties of the Board. The board shall have the authority to investigate certain Police actions, including but not limited to;

- (a) All deaths in custody and uses of deadly force.
- (b) All complaints of force that result in injury, discrimination against a protected class, violations of federal or state constitutional rights.
- (c) The Board may investigate other complaints or incidents of misconduct as they see fit or as mandated by City Code.

Section 2-1009. Severability. For the purpose of determining constitutionality, every section, subsection and subdivision thereof of this Section, at any level of subdivision, shall be evaluated separately. If any section, subsection or subdivision at any level is held invalid, the remaining sections, subsections and subdivisions shall not be affected and shall remain in full force and effect. The courts shall sever those sections, subsections and subdivisions necessary to render this Section consistent with the United States Constitution and with the Oregon Constitution. Each section, subsection and subdivision thereof, at any level of subdivision, shall be considered severable, individually or in any combination.

EXHIBIT B

Community Police Oversight Board

CAPTION (10 words; Reasonably identifies subject matter of petition)

Amends Charter: Authorizes new, independent community police oversight board. (9)

QUESTION (20 words; Plainly phrases chief purpose of the measure, so that affirmative response corresponds to affirmative vote)

Shall Charter be amended to authorize new, independent community police oversight board to investigate complaints against Portland Police, impose discipline? (20)

SUMMARY (175 words; Concise and impartial statement summarizing measure and major effects)

The measure adds a new Charter section authorizing an independent body to: investigate complaints against police employees; investigate all deaths in custody, uses of deadly force, complaints of force that result in injury, discrimination against protected classes, violations of constitutional rights; impose discipline deemed appropriate by the Board; recommend policy focused on community concerns to the Police Bureau and City Council. Board members appointed by approval of City Council. Board membership shall include representation from diverse communities, including those who have experienced systemic racism and historic overpolicing. Current, former employees of law enforcement agencies and their immediate family members may not serve on the Board. The Board's funding shall be no less than 5% of the Police Bureau's annual operational budget. The Board shall appoint a Director who serves at the pleasure of the Board and who will, in turn, appoint staff and investigators.

Board powers include:

- Investigate complaints
- Subpoena documents
- Access police records
- Compel witness statements, including from police officers
- Impose discipline, including termination

Other provisions to be established by City Code. (175)

RESOLUTION No. 37527 As Amended

Establish selection criteria for a Commission to craft the new police oversight system authorized by voters at the November 3, 2020 general election (Resolution)

WHEREAS, on July 30th, 2020 the Portland City Council voted to refer a Charter Amendment to the voters of Portland that would authorize the creation of a new police oversight system; and

WHEREAS, on November 3rd, 2020 Portland voters approved the new Charter Amendment supporting the measure by more than 82%; and

WHEREAS, the Charter language provides a framework for a police oversight system; and

WHEREAS, an inclusive, diverse community driven process is needed to develop recommendations to City Council for the structure and processes of the new oversight system; and

WHEREAS, it is of critical importance that there be a lengthy, involved process where consideration is given to the complex topic of police accountability and the various impacts of a police oversight system; and

WHEREAS, in 2017 City Council passed Resolution 37328, which created the Advisory Bodies Program led by the Office of Community and Civic Life (Civic Life) to provide standards for accountable, transparent Advisory Boards, Committees, and Commissions and best practices for diverse membership opportunities;

NOW THEREFORE BE IT RESOLVED THAT, the City Council approves an application process for a new Commission that will craft and provide City Council with recommendations for the details for establishing a new police oversight system in accordance with Exhibit A; and

BE IT FURTHER RESOLVED THAT, the Commission is tasked with developing the structure and processes of the new oversight system and ensuring that the requirements of the framework within the City Charter are met; and

BE IT FURTHER RESOLVED THAT, upon adoption of this resolution by-laws for the Commission will be crafted in a form substantially similar to Exhibit B, and an application will be developed in cooperation with Civic Life, Office of Management and Finance, and review from City Council; and

BE IT FURTHER RESOLVED THAT, upon adoption of this resolution and completion of an application, Civic Life will open and manage an application and recruitment for the Commission; and

BE IT FURTHER RESOLVED THAT, after completion of the application process, Civic Life shall provide the applicant profiles to the Council for Review, the Council members will each select four candidates based on agreed selection criteria whereafter Council shall appoint candidates to the Commission; and

BE IT FURTHER RESOLVED THAT, upon appointment of the Commission members an additional resolution will be brought forward identifying and defining the scope of work for this new Commission's tenure.

Adopted by the Council: December 16, 2020

Commissioner Jo Ann Hardesty

Prepared by: Derek Bradley

Date Prepared: December 8, 2020

Mary Hull Caballero

Auditor of the City of Portland

By *Keelan McClymont*
Deputy

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Agenda No.**RESOLUTION NO. 37527 As Amended**

Title

Establish selection criteria for a Commission to craft the new police oversight system authorized by voters at the November 3, 2020 general election (Resolution)

INTRODUCED BY Commissioner/Auditor: Commissioner Hardesty	CLERK USE: DATE FILED <u>December 8, 2020</u>
COMMISSIONER APPROVAL Mayor—Finance & Administration – Wheeler Position 1/Utilities - Fritz Position 2/Works - Ryan Position 3/Affairs - Hardesty <i>JL Hardesty</i> Position 4/Safety - Eudaly	Mary Hull Caballero Auditor of the City of Portland By: <u><i>Keelan McClymont</i></u> Deputy
BUREAU APPROVAL Bureau: Bureau Head:	ACTION TAKEN:
Prepared by: Derek Bradley Date Prepared: 12/8/2020	
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan <i>Heidi KGBrown</i>	
Council Meeting Date 12/16/2020	

AGENDA TIME CERTAIN <input checked="" type="checkbox"/> Start time: <u>4pm</u> Total amount of time needed: <u>1 hr</u> (for presentation, testimony and discussion)	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
CONSENT <input type="checkbox"/>		YEAS	NAYS
REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)	1. Fritz	1. Fritz	✓
	2. Ryan	2. Ryan	✓
	3. Hardesty	3. Hardesty	✓
	4. Eudaly	4. Eudaly	
	Wheeler	Wheeler	✓

Bureau Summary

Mission

To promote open and accountable government by providing independent and impartial reviews, access to public information, and services for City government and the public.

Overview

Portland has had a City Auditor since 1868 and an elected City Auditor since 1891. As the sixth elected official in Portland's government, the Auditor is functionally independent of City Council and accountable only to the public with the exception of the budget-setting process. The Auditor continues to press City Council to approve a framework to set the Auditor's Office budget in a way that respects its unique independent role in City government and removes the perception and opportunity for Council to use the budget to undermine accountability it does not welcome.

The Auditor's Office has fifty-one employees carrying out their work in five divisions. Three divisions have oversight and accountability responsibilities: Audit Services, Independent Police Review, and the Ombudsman's Office. Archives and Records Management oversees the Portland Archives and Records Center and helps City offices and bureaus meet government records retention requirements. Operations Management provides administrative support across all Auditor's Office divisions and oversees the Council Clerk, City Elections, and the Lobbyist and Political Consultants Registration Programs, which are Citywide responsibilities.

The Auditor's Office assumes that Independent Police Review will be managed by another agency designated by the Mayor and Council by July 1, 2022. To balance the Auditor's Office budget, funding for Independent Police Review is reduced to zero in its program offer and realigned to a placeholder until the Mayor and Council designate the agency to receive it and manage Independent Police Review's operations. The transfer will reduce requested staffing in the Auditor's Office to 39 employees in four divisions.

Strategic Direction

Transfer Independent Police Review

Voters approved a new community board for police oversight in November 2020. Council made clear that employees in Independent Police Review would not be transferred to staff the new board, which is not expected to be operational before December 2026. In the meantime, the City risks losing its existing independent civilian oversight expertise given the uncertainty of future employment. It also jeopardizes the City's ability to regain compliance with its settlement agreement

Office of the City Auditor

with the Justice Department. Council has rejected several proposals from the Auditor to stabilize Independent Police Review during the transition years and has not offered a viable plan of its own. Council has the option for the Auditor's Office to retain the division under terms outlined in the supplemental section of this document. If Council decides against the terms, it will assume responsibility for relocating and managing Independent Police Review, effective July 1, 2022.

Resolve Structural Conflicts in Setting the Auditor's Budget

We renew our commitment to work with Council on a framework to set the Auditor's budget that protects the office's independence and respects Council's fiduciary responsibilities. We submit an updated proposal for a five-year funding model to implement the intent of the Charter Section 2-505. A similar funding proposal submitted last year to the Charter Review Commission remains under consideration as a Charter amendment. The Auditor's Office prefers designing a funding model in a budget note to allow for adjustments as needed, but a Charter proposal for voters to consider is a viable option. It also would be in keeping with Council's decision to refer to voters a proposal to guarantee funding for a police accountability board as a percentage of the Police Bureau's budget. Voters supported the guaranteed budget. Information about the funding model we prefer is in the supplemental section.

Implement strategic plan goals

An officewide strategic plan will be finalized this spring. Goals focus on anti-racism, office culture, historically underserved communities, and equitable access to services and information. Elements of the plan are underway or will be by the end of this fiscal year, but the planning horizon is through Fiscal Year 2022-23.

Transition to a new Auditor

The Auditor's Office will have a new leader on January 1, 2023 and planning is underway to ensure a smooth transition and onboarding phase.